

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Mac Muir	Team: APU	CCRB Case #: 201806550	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 07/29/2018 2:30 AM	Location of Incident: 224 Willis Avenue	Precinct: 40	18 Mo. SOL 1/29/2020	EO SOL 1/29/2020	
Date/Time CV Reported Thu, 08/09/2018 5:47 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 08/09/2018 5:47 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. POM John Manzo	16260	960864	040 PCT
3. POM Mariano Bulfamante	05533	953708	040 PCT
4. POM Benito Cruz	01486	956557	040 PCT
5. POM Andrei Nijnic	06784	961005	040 PCT
6. POM Eduard Lucero	12992	960838	040 PCT
7. An officer			
8. SGT William Miller	3280	930740	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ruben Serrano	13592	951235	040 PCT
2. POM Stephen Barry	17142	954525	040 PCT
3. POM Majeed Arif	02098	956395	040 PCT
4. POM Joshua Montgomery	06288	961962	040 PCT
5. POF Krista Juliano	17798	960738	040 PCT
6. POM James Curley	18291	958457	040 PCT
7. POM Enmanuel Cruz	24526	965017	040 PCT
8. POM Edison Taveras	23952	962833	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
9. POM Fraily Luna	29447	955103	040 PCT
10. POM Baudilio Garciarivas	10251	947916	040 PCT
11. POF Haronid Pena	10156	963686	040 PCT
12. POF Erika Dionicio	05426	956602	040 PCT
13. POM Michael Brito	25327	941458	040 PCT
14. POM Ray Silva	19406	959986	040 PCT
15. POF Sophia Daly	01735	960420	040 PCT
16. POM Lawrence Chan	06046	956513	040 PCT
17. SGT Emory McClaney	03620	945976	040 PCT
18. POM Christophe Widmer	18703	959367	040 PCT
19. POF Erica Torres	21214	963302	040 PCT
20. POM Watson Dorce	07221	961516	040 PCT
21. POF Fresia Maciasburgos	18286	955108	040 PCT
22. POM Brian Destefano	7166	954727	040 PCT
23. POM Wayne Dorsey	08992	948017	DCEI
24. POM Daniel Mardjonovic	6391	955123	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT William Miller	Abuse: At § 87(2)(b) in the Bronx, Sergeant William Miller stopped § 87(2)(b)	
B.SGT William Miller	Abuse: At § 87(2)(b) in the Bronx, Sergeant William Miller frisked § 87(2)(b)	
C. An officer	Discourtesy: At § 87(2)(b) in the Bronx, an officer spoke discourteously to § 87(2)(b)	
D. Officers	Discourtesy: At § 87(2)(b) in the Bronx, officers spoke discourteously to § 87(2)(b)	
E.SGT William Miller	Discourtesy: At § 87(2)(b) in the Bronx, Sergeant William Miller spoke discourteously to § 87(2)(b)	
F. An officer	Discourtesy: At § 87(2)(b) in the Bronx, an officer spoke discourteously to § 87(2)(b)	
G. Officers	Discourtesy: At § 87(2)(b) in the Bronx, officers spoke discourteously to § 87(2)(b)	
H.POM Mariano Bulfamante	Discourtesy: At § 87(2)(b) in the Bronx, Police Officer Mariano Bulfamante spoke discourteously to § 87(2)(b)	
I.POM Mariano Bulfamante	Off. Language: At § 87(2)(b) in the Bronx, Police Officer Mariano Bulfamante made remarks to § 87(2)(b) based upon gender.	
J.POM John Manzo	Force: At § 87(2)(b) in the Bronx, Police Officer John Manzo used a Taser against § 87(2)(b)	
K.POM Benito Cruz	Force: At § 87(2)(b) in the Bronx, Police Officer Benito Cruz used physical force against § 87(2)(b)	
L.POM Benito Cruz	Discourtesy: At § 87(2)(b) in the Bronx, Police Officer Benito Cruz spoke discourteously to § 87(2)(b)	
M.POM Benito Cruz	Off. Language: At § 87(2)(b) in the Bronx, Police Officer Benito Cruz made remarks to § 87(2)(b) based upon gender.	

Officer(s)	Allegation	Investigator Recommendation
N.POM Benito Cruz	Off. Language: At § 87(2)(b) in the Bronx, Police Officer Benito Cruz made remarks to § 87(2)(b) based upon race.	
O.POM Andrei Nijnic	Abuse: At § 87(2)(b) in the Bronx, Andrei Nijnic threatened an individual with the use of force.	
P.POM Benito Cruz	Abuse: At § 87(2)(b) in the Bronx, Police Officer Benito Cruz threatened an individual with the use of force.	
Q. Officers	Force: At § 87(2)(b) in the Bronx, Officers used physical force against an § 87(2)(b)	
R. An officer	Discourtesy: At § 87(2)(b) in the Bronx, an officer spoke discourteously to an § 87(2)(b)	
S. An officer	Discourtesy: At § 87(2)(b) in the Bronx, an officer spoke discourteously to an § 87(2)(b)	
T. An officer	Discourtesy: At § 87(2)(b) in the Bronx, an officer spoke discourteously to an § 87(2)(b)	
U. An officer	Discourtesy: At § 87(2)(b) in the Bronx, an officer spoke discourteously to an § 87(2)(b)	
V. An officer	Discourtesy: At § 87(2)(b) in the Bronx, an officer spoke discourteously to an § 87(2)(b)	
W. An officer	Discourtesy: At § 87(2)(b) in the Bronx, an officer spoke discourteously to an § 87(2)(b)	
X. An officer	Off. Language: At § 87(2)(b) in the Bronx, an officer made remarks to § 87(2)(b) based upon race.	
Y. An officer	Discourtesy: At § 87(2)(b) in the Bronx, an officer spoke discourteously to § 87(2)(b)	
Z.POM Eduard Lucero	Discourtesy: At the 40th Precinct stationhouse, at the 40th Precinct stationhouse, Police Officer Eduard Lucero spoke discourteously to § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		
§ 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

On August 9, 2018, § 87(2)(b) submitted this complaint via the CCRB website.

At approximately 2:30 a.m. on July 29, 2018, § 87(2)(b) was with a group of approximately twenty people in front of a deli at 224 Willis Avenue in the Bronx. An unknown individual placed a 9-1-1 call alleging that someone in § 87(2)(b)'s group had a firearm. A large group of officers, many of whom are unknown, but including Sergeant William Miller of the 40th Precinct, responded to their location. Sergeant Miller stopped and frisked § 87(2)(b) (**Allegation A: Abuse of Authority – Stop: § 87(2)(g)**) (**Allegation B: Abuse of Authority – Frisk: § 87(2)(g)**). No firearm was recovered. After explaining the reason for the stop, an officer allegedly said, “You still gotta get the fuck out of here” (**Allegation C: Discourtesy – Word: § 87(2)(g)**). Sergeant Miller instructed the officers to disperse the crowd. Unknown officers allegedly said, “Y’all need to get the fuck off of the corners,” and “Y’all need to get the fuck out of here” (**Allegation D: Discourtesy – Word: § 87(2)(g)**). Sergeant Miller allegedly said, “Get the fuck out of here” (**Allegation E: Discourtesy – Word: § 87(2)(g)**). An officer said, “Get the fuck out of here” (**Allegation F: Discourtesy – Word: § 87(2)(g)**). An unknown number of other unknown officers said, “Get the fuck out of here” (**Allegation G: Discourtesy – Word: § 87(2)(g)**).

As officers attempted to disperse the crowd, Sergeant Miller attempted to grab § 87(2)(b)'s wrist. § 87(2)(b) pulled his hand back, and when Sergeant Miller attempted to grab him again, § 87(2)(b) turned around and ran away. While chasing § 87(2)(b) Police Officer Mariano Bulfamante yelled, “You fucking pussy,” two times (**Allegation H: Discourtesy – Word: § 87(2)(g)**) (**Allegation I: Offensive Language – Gender: § 87(2)(g)**). While chasing § 87(2)(b) Police Officer John Manzo deployed a Taser into § 87(2)(b)'s back (**Allegation J: Force – Nonlethal Restraining Device: § 87(2)(g)**).

§ 87(2)(b) apparently knocked unconscious, began to bleed from his head. As § 87(2)(b) was being handcuffed, Police Officer Benito Cruz said, “Yeah. Yeah. Yeah,” grabbed § 87(2)(b)'s head, and pushed it into the concrete (**Allegation K: Force – Physical Force: § 87(2)(g)**). In tandem, Police Officer Cruz moved close to § 87(2)(b)'s ear said, “You talking shit right you pussy ass nigger” (**Allegation L: Discourtesy – Word: § 87(2)(g)**) (**Allegation M: Offensive Language – Gender: § 87(2)(g)**) (**Allegation N: Offensive Language – Race: § 87(2)(g)**).

After § 87(2)(b) was handcuffed, Police Officer Andrew Nijnic said, “Yo. Drive stun his ass,” and pointed his taser at an unknown individual's head (**Allegation O: Abuse of Authority – Threat of Force: § 87(2)(g)**).

In another altercation, Police Officer Cruz pointed his Taser at § 87(2)(b)'s chest (**Allegation P: Abuse of Authority – Threat of Force: § 87(2)(g)**). Unknown officers chased § 87(2)(b) and forcibly handcuffed him (**Allegation Q: Force – Physical Force: § 87(2)(g)**). An unknown officer said, “Talking all the shit. Talking all this shit, right. Fuck” (**Allegation R: Discourtesy – Word: § 87(2)(g)**). An unknown officer said, “Give us your fucking arm” (**Allegation S: Discourtesy – Word: § 87(2)(g)**). Another unknown officer said, “Fucking arm” (**Allegation T: Discourtesy – Word: § 87(2)(g)**).

§ 87(2)(g)). Another unknown officer said, "Give us your fucking arm, motherfucker" (Allegation U: Discourtesy – Word: § 87(2)(g)). § 87(2)(b) yelled, "They're beating me up," and an unknown officer replied, "Shut the fuck up" (Allegation V: Discourtesy – Word: § 87(2)(g)). An unknown officer said, "Motherfuckers in the Bronx think you can run on a white boy" (Allegation W: Discourtesy – Word: § 87(2)(g)) (Allegation X: Offensive Language – Race: § 87(2)(g)). An unknown officer said, "Get the fuck up" (Allegation Y: Discourtesy – Word: § 87(2)(g)).

At the 40th Precinct stationhouse, Police Officer Eduard Lucero told § 87(2)(b) "Calm the fuck down. Don't try that shit right here. We're not the ones motherfucker, we're not the ones" (Allegation Z: Discourtesy – Word: § 87(2)(g)).

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(2)(b) was arrested for § 87(2)(b)

(Board Review 01). Following his arrest, § 87(2)(b) pleaded guilty to one count of disorderly conduct (Board Review 02).

Body-worn camera footage was obtained (incl. Board Review 3-7).

Findings and Recommendations

Allegation A – Abuse of Authority: At 224 Willis Avenue in the Bronx, Sergeant William Miller stopped § 87(2)(b)

Allegation B – Abuse of Authority: At 224 Willis Avenue in the Bronx, Sergeant William Miller frisked § 87(2)(b)

§ 87(2)(b) provided a telephone statement on August 13, 2018 (Board Review 08), and was interviewed at the CCRB on August 22, 2018 (Board Review 09). He stated that he spent the evening of July 28, 2018, with approximately one hundred individuals who had been celebrating the Mitchel Housing Community Day at the intersection of East 138th Street and Alexander Avenue in the Bronx. Between approximately 1:00 a.m. and 1:30 a.m., he and a group of approximately twenty individuals walked to the deli at 224 Willis Avenue. He stood with approximately fifteen individuals outside while five individuals went inside to purchase sandwiches. As they stood waiting outside, a group of police officers, including Sergeant Miller, approached them. Sergeant Miller said that they had received a call that a person in their group had a gun. He said that the alleged person had been described to be wearing an orange bandana.

§ 87(2)(b) who § 87(2)(b) only knew as § 87(2)(b) was standing immediately next to him. § 87(2)(b) said, “He doesn’t have anything on him,” and then told Sergeant Miller to search him. § 87(2)(b) added, “I don’t have anything on me.” Sergeant Miller patted § 87(2)(b) down. § 87(2)(b) did not remember whether he went into § 87(2)(b)’s pockets. When Sergeant Miller finished, he said, “Okay. He doesn’t have anything on him. He’s clean.” § 87(2)(b) asked Sergeant Miller why he had been searched. Sergeant Miller showed § 87(2)(b) and § 87(2)(b) his radio and said, “Listen to the radio.” § 87(2)(b) and § 87(2)(b) listened to the radio and heard someone provide a description that fit that of § 87(2)(b).

The investigation did not identify § 87(2)(b) and was consequently unable to obtain a statement from him.

Sergeant Miller was interviewed at the CCRB on March 8, 2019 (Board Review 10). Sergeant Miller stated that at approximately 2:45 a.m. on July 29, 2018, he received a radio notification that § 87(2)(b) had a gun in the vicinity of 137th Street and Willis Avenue in the Bronx. He remembered that the description was “specific” but did not remember what the description was. He did not remember if the call was anonymous, but it would have been communicated to him if it was. When he arrived at the intersection of East 137th Street and Willis Avenue, he observed a crowd of twenty to twenty-five individuals. He did not remember who he was working with on that day, but believed that all of the officers from his Anti-Crime unit were present. Sergeant Miller observed § 87(2)(b) “fitting the exact description” that had been provided over the radio. An officer – Sergeant Miller did not remember who – approached this individual “calmly and not aggressively.” This individual was told why he was being stopped. An officer “probably” obtained his identification, but he did not know for sure. The same officer frisked this individual because the man was allegedly in possession of a firearm. Sergeant Miller did not remember if the officer went into the man’s pockets because he was not watching the frisk. Sergeant Miller was instead focusing on the crowd to make sure that his officers were safe.

According to EVENT #§ 87(2)(b) (Board Review 11) and the associated 9-1-1 call (Board Review 12), at 2:03 a.m. on July 29, 2018, § 87(2)(b) called 9-1-1 and stated that a person with an orange bandana and an orange shirt had a firearm in front of a store between 137th Street and 138th Street on Willis Avenue. The individual hung up without identifying himself or providing additional information. The Radio Communications (Board Review 13) (Board Review 14) showed that although officers were informed of the substance of this call, they were not informed that the caller did not identify himself.

Police Officer Ruben Serrano’s body-worn camera footage (Board Review 15) depicts the group § 87(2)(b) and Sergeant Miller described arguing with a group of officers about the color of § 87(2)(b)’s bandana. This individual, identified by the investigation as § 87(2)(b) (Board Review 16), is apparently standing amidst the officers and civilians wearing an orange bandana and an orange shirt.

Sergeant Miller did not have any memo book entries regarding this incident (Board Review 17).

No stop reports were prepared by the 40th Precinct on July 29, 2018 (Board Review 18).

§ 87(2)(b) described the officer who stopped and frisked § 87(2)(b) as an approximately 5’9” tall plainclothes white male officer in his mid-30’s, with a muscular build, a medium skin tone, a § 87(2)(b) and grey beard, a navy-blue shirt, a vest over his shirt, beige pants, and a black hat that was on backwards.

According to Sergeant Miller MOS Photograph (Board Review 19) , he is a § 87(2)(b) at the time of the incident.

Screenshots from the body-worn camera footage of Police Officer Majeed Arif, Police Officer Lawrence Chan, and Police Officer Benito Cruz (Board Review 20) depict Sergeant Miller with a large black and white reddish beard. He is wearing a black hat that is on backwards, a navy-blue shirt, and a vest over his shirt.

Based on § 87(2)(b) s description of the officer who frisked § 87(2)(b) the footage that corroborated his description, and Sergeant Miller’s own ability to recount parts of the stop and frisk, the investigation determined that he was the officer who stopped and frisked § 87(2)(b). Consequently, the stop and frisk allegations are pleaded against him.

New York State Penal Law 265.01-b (Board Review 21) states that a person is guilty of criminal possession of a firearm when they possess any firearm.

According to People v. Debour, 40 N.Y.2d 210 (1976) (Board Review 22), a person is considered to have been stopped when police action results in a “significant interruption [of the] individual’s liberty of movement.” In order to stop a person there must exist at that moment a founded suspicion that the person has committed, is committing, or is about to commit a crime.

According to Patrol Guide Procedure 212-11 (Board Review 23) , a ‘Terry Stop/Level 3 encounter’ is any encounter between a civilian and a uniformed member of service in which a reliable person would not feel free to disregard the officer and walk away. A stop may be conducted only when a police officer has individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a felony or Penal Law misdemeanor. Reasonable suspicion would exist when the information known to the member of service would make an ordinarily prudent and cautious police officer under the circumstances believe that a felony or Penal Law misdemeanor has been, is being or is about to be committed. An officer may conduct a frisk if they reasonably suspect that the person is armed and dangerous.

§ 87(2)(g)
[REDACTED]

Allegation C – Discourtesy: At 224 Willis Avenue in the Bronx, an officer spoke discourteously to § 87(2)(b)

Allegation D – Discourtesy: At 224 Willis Avenue in the Bronx, officers spoke discourteously to § 87(2)(b)

Allegation E – Discourtesy: At 224 Willis Avenue in the Bronx, Sergeant William Miller spoke discourteously to § 87(2)(b)

Allegation F – Discourtesy: At 224 Willis Avenue in the Bronx, an officer spoke discourteously to § 87(2)(b)

Allegation G – Discourtesy: At 224 Willis Avenue in the Bronx, officers spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that after Sergeant Miller stopped and frisked § 87(2)(b) he and the other officers ordered the crowd to disperse. First, an officer with Sergeant Miller said, “You still gotta get the fuck out of here.” Then additional officers – § 87(2)(b) did not see who – said, “Y’all need to get the fuck off of the corners,” and “Y’all need to get the fuck out of here.” § 87(2)(b) attempted to explain to the officers that they were going to leave as soon as everyone left the deli. Sergeant Miller and the officer who was next to him both said, “Get the fuck out of here.” § 87(2)(b) heard other officers say, “Get the fuck out of here,” but § 87(2)(b) did not see who they were. § 87(2)(b) described the officer who was with Sergeant Miller – and who cursed at him – as an approximately 6’0” tall uniformed black or Hispanic male in his late 20’s with a medium build, § 87(2)(b) skin, black hair, no glasses, and no facial hair. This officer was wearing a navy-blue uniform.

Sergeant Miller stated that “a lot” of officers were present when he arrived at the location, and that he believed all of the Anti-Crime officers were present. More officers continued to respond over the course of the incident. Sergeant Miller denied saying, “Get the fuck out of here.” He denied hearing any other officer say, “Get the fuck out of here,” or, “Y’all need to get the fuck off the corners.” He denied hearing any officers using profanity. Sergeant Miller did not know which officers were working with him during this incident.

None of the body-worn camera footage obtained by the investigation depicted the discourtesies alleged by § 87(2)(b). However, the body-worn camera footage did not capture the portion of the incident in which § 87(2)(b)’s allegations would have been depicted.

It is undisputed that officers from the 40th Precinct, 41st Precinct, 42nd Precinct, PSA-7, SRG, and Patrol Borough Bronx Anti-Crime responded to this incident. It is also undisputed that the investigation was not provided with all of the available body-worn camera footage regarding this incident.

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

§ 87(2)(g)
§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation H – Discourtesy: At 224 Willis Avenue in the Bronx, Police Officer Mariano Bulfamante spoke discourteously to § 87(2)(b)
Allegation I – Offensive Language: At 224 Willis Avenue in the Bronx, Police Officer Mariano Bulfamante made remarks to § 87(2)(b) based upon gender.

§ 87(2)(b) alleged that after officers cursed at him, Sergeant Miller said, “You come here.” Sergeant Miller attempted to grab § 87(2)(b)’s left wrist. § 87(2)(b) pulled his wrist away from Sergeant Miller and said, “What’s the problem?” § 87(2)(b) put his hands up. When Sergeant Miller moved again as if to grab § 87(2)(b)’s wrist, § 87(2)(b) pulled his wrist back, turned around, and began to run away.

Police Officer Bulfamante’s body-worn camera footage (Board Review 24) depicted him chasing § 87(2)(b) and yelling, “You fucking pussy. You fucking pussy” (Board Review 03).

During his CCRB interview, Police Officer Bulfamante acknowledged that he said, “You fucking pussy. You fucking pussy.” He did not remember who it was directed toward. He did not remember why he made this statement.

According to Patrol Guide Procedure 203-10 (Board Review 25), officers are prohibited from using discourteous or disrespectful remarks. In Disciplinary Case #79627/04 (Board Review 26), the NYPD held that “when a police officer uses an otherwise impolite word during a stressful encounter where that officer is attempting to maintain control of the situation, the officer’s verbal slip does not rise to the level of actionable misconduct.” The stressful encounter in that case was an officer saying, “Get the fuck out of here,” a single profanity in “what was becoming a tense street standoff with an unruly civilian.”

According Patrol Guide Procedure 203-10 (Board Review 25), officers are prohibited from using discourteous or disrespectful remarks regarding another person’s gender.

It is undisputed that Police Officer Bulfamante yelled, “You fucking pussy. You fucking pussy,” as he chased § 87(2)(b) § 87(2)(g)

§ 87(2)(g)

Allegation J – Force: At 224 Willis Avenue in the Bronx, Police Officer John Manzo used a Taser against § 87(2)(b)

§ 87(2)(b) stated that when he reached the center of 137th Street, an officer used a Taser against him, causing him to lose consciousness. The next thing § 87(2)(b) remembered was seeing officers standing above him as they tried to pick him up.

Police Officer Manzo was interviewed at the CCRB on October 17, 2018 (Board Review 26). Police Officer Manzo stated that as he was instructing § 87(2)(b) and other people in the group to disperse, he observed § 87(2)(b) § 87(2)(b) refused to move after being issued multiple instructions to do so. Sergeant Miller attempted to grab § 87(2)(b)'s arm. In response, § 87(2)(b) § 87(2)(b) pulled his arm away, pushed Sergeant Miller, turned around, and ran away. § 87(2)(b) ran through a crowd of plainclothes officers and continued “full speed” into the street. While chasing § 87(2)(b) Police Officer Manzo deployed his Taser into § 87(2)(b)'s back. When the Taser prongs hit § 87(2)(b)'s back from sixteen to twenty feet away, § 87(2)(b)'s body seized and hit the ground. Police Officer Manzo administered one five second electrical charge. He did not know whether § 87(2)(b) lost consciousness after he was “Tased.” Police Officer Manzo used his Taser because it was a “less lethal” option than a forcible takedown, which could have resulted in an injury to either § 87(2)(b) or an officer who would have had to take him to the ground. Police Officer Manzo’s main concern was for § 87(2)(b) Police Officer Manzo believed that using his Taser was a “safer way” to subdue someone, especially when they were being combative, aggressive, or resistant. He believed that physical force or a fight may have led him to need to cause injury, for example, to punch § 87(2)(b) in the face. He understood that by using a Taser he would likely gain immediate compliance from § 87(2)(b) He believed that this was the more “humane” option than to fight someone, and was the “least intrusive,” “safest option.” Police Officer Manzo added, “Being that we have Tasers now, there’s really no reason to use forcible takedowns to try to tackle somebody. It’s not good for either party.” Upon being prompted to do so by his PBA attorney, Police Officer Manzo added that he used his Taser because a person § 87(2)(b)'s size, 6’4” tall and over 225 pounds, who was also aggressive, would likely take several officers to take to the ground. Police Officer Manzo received yearly training on how to use a Taser and Use of Force policies. These trainings inform officers about how Tasers work, what makes them safe, how to properly test them before their tour, what a safe battery level was, how to make sure the cartridges were in safe and operable conditions, and what all of the buttons and switches on the Tasers did. He first received this training at the NYPD academy sometime in 2016. Since then, Police Officer Manzo had received retraining and requalification.

Police Officer Manzo’s body-worn camera footage (Board Review 27) is essentially consistent with the statements of Police Officer Manzo and § 87(2)(b) The footage does not depict § 87(2)(b) pushing an officer, nor does it exclude the possibility that he did. When § 87(2)(b) reaches the middle of Willis Avenue, Police Officer Manzo deploys his Taser into § 87(2)(b)'s

back. § 87(2)(b) appears to go up into the air (Board Review 04) (Board Review 28) and then fall forward onto the ground. Officers surround § 87(2)(b) and place him into handcuffs.

Police Officer Macias-Burgos' body-worn camera footage (Board Review 30) (Board Review 31) shows that at the 40th Precinct stationhouse, § 87(2)(b) appeared to have abrasions across his forehead, on his mouth, and on the right side of his face.

§ 87(2)(b)'s medical records from § 87(2)(b) (Privileged Medical Records 01) show that on July 29, 2018, the Taser prongs in his back were removed. § 87(2)(b) said that "he fell on his face." He had mild pain in his back from the Taser prongs, a swollen face, and pain to his face. § 87(2)(b) refused to be treated or evaluated by a physician. He was discharged thereafter and released back into NYPD custody.

According to Patrol Guide Procedure 221-01 (Board Review 32), in determining whether the use of force is reasonable, members of service should consider the following; the nature and severity of the circumstances; the actions taken by the subject; the duration of the action; the immediacy of the perceived threat or harm to the subject, members of service, and/or bystanders; whether the subject is actively resisting arrest; whether the subject is attempting to evade arrest by flight; the number of subjects in comparison to the number of MOS; the size, age, and condition of the subject in comparison to MOS; the subject's violent history, if known; the presence of hostile crowd or agitators; and whether the subject is apparently under the influence of a stimulant or narcotic which would affect their pain tolerance or increase the likelihood of violence.

Patrol Guide Procedure 221-02 (Board Review 35) defines active resisting as physically evasive movements to defeat a member of service's attempt at control.

Patrol Guide Procedure 221-03 (Board Review 42) defines a substantial physical injury as a substantial impairment of physical condition, including a significant contusion, a laceration requiring sutures, and any injury or condition, that resulted from police contact or action, requiring treatment at a hospital emergency room. The removal of CEW darts and routine examination of a subject who received a CEW discharge at a hospital emergency room shall not be classified as a "Substantial Physical Injury."

According to Patrol Guide Procedure 221-08 (Board Review 33), when determining whether to use a Conducted Electrical Weapon (CEW), i.e. a Taser, officers should consider the same factors as those cited in Patrol Guide Procedure 221-01.

According to Patrol Guide Procedure 221-08 (Board Review 33), a CEW should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or others present. "Active aggression" is defined as Threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent. Fleeing should not be the sole justification for using a CEW against a subject. Members should consider the severity of the offense, the subject's threat level to others, and the risk of serious injury to the subject before deciding to use a CEW on a fleeing subject.

§ 87(2)(g)

§ 87(2)(g)

As per Patrol Guide Procedure 221-08 (Board Review 33), a CEW should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or others present. § 87(2)(g)

Patrol Guide Procedure 221-08 (Board Review 33), states that officers should consider the severity of the offense, the subject's threat level to others, and the risk of serious injury to the subject before deciding to use a CEW on a fleeing subject. § 87(2)(g)

§ 87(2)(g)

Police Officer Manzo reasoned that he used a Taser in this situation because it was easier than taking § 87(2)(b) to the ground or punching him in the face, and in that was consequently more “humane.” § 87(2)(g)

§ 87(2)(g)

Allegation K – Force: At 224 Willis Avenue in the Bronx, Police Officer Benito Cruz used physical force against § 87(2)(b)

Allegation L – Discourtesy: At 224 Willis Avenue in the Bronx, Police Officer Benito Cruz spoke discourteously to § 87(2)(b)

Allegation M – Offensive Language: At 224 Willis Avenue in the Bronx, Police Officer Benito Cruz made remarks to § 87(2)(b) based upon gender.

Allegation N – Offensive Language: At 224 Willis Avenue in the Bronx, Police Officer Benito Cruz made remarks to § 87(2)(b) based upon race.

As shown on Police Officer Benito Cruz’s body-worn camera (Board Review 05), after Police Officer Manzo deployed his Taser into § 87(2)(b)’s back, Police Officer Cruz knelt next to § 87(2)(b) who was apparently unconscious and bleeding from his head. § 87(2)(b) appeared to be not moving, his eyes were closed, and he was making an unspecified groaning sound. The wires from the Taser could be seen protruding from § 87(2)(b)’s back. As § 87(2)(b) was being handcuffed, Police Officer Cruz said, “Yeah. Yeah. Yeah,” and grabbed § 87(2)(b)’s head. Police Officer Cruz appeared to push § 87(2)(b)’s head into the concrete, Cruz moved

close to § 87(2)(b)'s ear said, "You talking shit right you pussy ass nigger." Police Officer Cruz then appeared to turn off his body-worn camera.

Police Officer Cruz stated that when the Taser was deployed into § 87(2)(b)'s back, § 87(2)(b) fell to the ground and officers attempted to place him into handcuffs. Police Officer Cruz then said, "Yeah we got you," "What's up we got you," "Pussy," and "Pussy ass." During his CCRB interview, Police Officer Cruz was presented with the body-worn camera footage referenced above. After watching this video, Police Officer Cruz acknowledged that it was his hand on § 87(2)(b)'s head, and that he said, "You talking shit right you pussy ass nigger." Police Officer Cruz was asked why he made these statements to § 87(2)(b). He replied that he was unaware that he had made these statements until he reviewed his body-worn camera footage. He added that he felt like he was in danger and did not mean anything by what he had said. At the time Police Officer Cruz made this statement, he did not know § 87(2)(b) had been struck by a Taser or that he was unconscious. He was not aware that § 87(2)(b) had been struck by a Taser until several seconds later, when he observed the prongs in § 87(2)(b)'s back. Police Officer Cruz stated that his body-worn camera footage stopped because it fell off. He then picked it up off the ground and reset it.

During his CCRB interview, Police Officer Cruz added that, "A lot of these guys, sometimes they don't comply unless you curse at them." He added that if an officer says "please" someone is liable to reply, "Suck my dick. I'm not moving," and that if an officer cursed at § 87(2)(b) in an authoritative voice they were more likely to move. He stated that some civilians did not comply when being treated politely.

As stated above, Police Officer Manzo's body-worn camera footage (Board Review 04) shows him deploying a Taser into § 87(2)(b)'s back. § 87(2)(b) goes up into the air, falls to the ground, and goes limp.

According to Patrol Guide Procedure 221-02 (Board Review 35), officers are to apply no more than the reasonable force necessary to gain control.

According to Patrol Guide Procedure 203-10 (Board Review 25), officers are prohibited from using discourteous or disrespectful remarks regarding another person's gender.

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)

221-

Allegation O – Abuse of Authority: At 224 Willis Avenue in the Bronx, Police Officer Andrei Nijnic threatened § 87(2)(b) with the use of force.

Police Officer Nijnic's body-worn camera footage (Board Review 36) showed him walking around the area near where § 87(2)(b) was placed in handcuffs. He appeared to observe a group of officers apprehending § 87(2)(b). Police Officer Nijnic said, "Yo. Dry stun his ass," then, as a group of officers were physically on top of the individual, Police Officer Nijnic pointed his Taser toward the individual's face, chest, and neck, and said, "Put your hands behind," two times. The individual replied, "No," and said that he wanted his sister to take his phone. Police Officer Nijnic walked away.

The investigation was unable to identify the individual depicted in this video. Consequently, a statement was not obtained from him.

During his CCRB interview, Police Officer Nijnic was presented with his body-worn camera footage. He affirmed that he said, "Yo, drive stun his ass." After observing the portion of the video in which he pointed his Taser at § 87(2)(b), Police Officer Nijnic was asked why he pointed his Taser at the individual. Police Officer Nijnic replied, "So he complied." Police Officer Nijnic was asked whether there was any other reason that he might have pointed his Taser at the individual. He replied, "Just to gain compliance." He added, "It's just intimidation," and, "Once the people see the red light, they get intimidated, and they get to comply."

Based on the body-worn camera footage, the investigation determined that Police Officer Nijnic pointed his Taser at § 87(2)(b)'s neck (Board Review 07) (Board Review 37).

According to Patrol Guide Procedure 221-08 (Board Review 33), officers should avoid discharging CEWs at an individual's head, neck, and chest, if possible.

§ 87(2)(g)

Allegation P – Abuse of Authority: At 224 Willis Avenue in the Bronx, Police Officer Benito Cruz threatened § 87(2)(b) with the use of force.

Police Officer Cruz’s body-worn camera footage (Board Review 38), shows that several minutes after § 87(2)(b) was handcuffed, he observed another individual, identified by the investigation as § 87(2)(b) (Board Review 06) (Board Review 39). Unknown officers could be heard telling § 87(2)(b) to, “Walk away.” § 87(2)(b) yelled and appeared to move toward the officers. Police Officer Cruz pointed his Taser at § 87(2)(b)’s chest and said, “Walk away,” three times. § 87(2)(b) turned around and sprinted in the opposite direction. Approximately ten to fifteen officers chased after § 87(2)(b).

The investigation was unable to obtain a statement from § 87(2)(b).

Police Officer Cruz stated that he observed § 87(2)(b) push a police officer. Police Officer Cruz responded by withdrawing his Taser and telling the individual to calm down. An officer said, “Grab him,” and officers, who he believed were from PSA-7, chased the individual down the street. Police Officer Cruz was presented with his body-worn camera footage and he agreed that this reflected the portion of the incident he was describing. He pointed his Taser at this individual to prevent them from harming an officer. That was the only reason he pointed his Taser at the individual.

Based on Police Officer Cruz’s body-worn camera footage, the investigation was unable to determine whether or not § 87(2)(b) pushed a police officer. The investigation did determine that § 87(2)(b) moved toward the officers with his head and chest forward while yelling.

According to Patrol Guide Procedure 221-01 (Board Review 32), force may be used when it is reasonable to ensure the safety of a member of service.

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation Q – Force: At 224 Willis Avenue in the Bronx, officers used force against

§ 87(2)(b)

Allegation R – Abuse of Authority: At 224 Willis Avenue in the Bronx, an officer spoke discourteously toward

§ 87(2)(b)

Allegation S – Abuse of Authority: At 224 Willis Avenue in the Bronx, an officer spoke discourteously toward

§ 87(2)(b)

Allegation T – Abuse of Authority: At 224 Willis Avenue in the Bronx, an officer spoke discourteously toward

§ 87(2)(b)

Allegation U – Abuse of Authority: At 224 Willis Avenue in the Bronx, an officer spoke discourteously toward

§ 87(2)(b)

Allegation V – Abuse of Authority: At 224 Willis Avenue in the Bronx, an officer spoke discourteously toward

§ 87(2)(b)

Allegation W – Abuse of Authority: At 224 Willis Avenue in the Bronx, an officer spoke discourteously toward

§ 87(2)(b)

Allegation X – Abuse of Authority: At 224 Willis Avenue in the Bronx, an officer spoke discourteously toward

§ 87(2)(b)

Allegation Y – Abuse of Authority: At 224 Willis Avenue in the Bronx, an officer spoke discourteously toward

§ 87(2)(b)

Police Officer Edison Taveras' body-worn camera footage (Board Review 40), shows that after Police Officer Cruz pointed his Taser at § 87(2)(b)'s chest, officers, including Police Officer Taveras, chased § 87(2)(b) town the street. Unknown officers used force to place § 87(2)(b) into handcuffs. During the struggle to place § 87(2)(b) into handcuffs, an officer said, "Talking all the shit. Talking all this shit, right. Fuck." An officer said, "Give us your fucking arm." Another officer said, "Fucking arm." Another officer said, "Give us your fucking arm, motherfucker." § 87(2)(b) yelled, "They're beating me up," and an officer said, "Shut the fuck up." An officer said, "Motherfuckers in the Bronx think you can run on a white boy." An officer said, "Get the fuck up."

As stated above, the investigation was unable to obtain a statement from § 87(2)(b)

Police Officer Cruz stated that he believed the officers who chased § 87(2)(b) were from PSA-7.

Officers from PSA-7 and the 42nd were equipped with body-worn cameras on or before July 19, 2018 (Board Review 41).

None of the other officers interviewed regarding this incident were able to attribute these statements to specific officers. None of the body-worn camera footage depicted the force used during this part of the incident, nor did it depict anyone's face as they spoke.

§ 87(2)(g)

Allegation Z – Discourtesy: At the 40th Precinct stationhouse, Police Officer Eduard Lucero spoke discourteously to § 87(2)(b)

Inside the 40th Precinct stationhouse, Police Officer Lucero’s body-worn camera depicted § 87(2)(b) at the front desk in handcuffs. As he was being searched, § 87(2)(b) twisted his body. Police Officer Lucero and Police Officer Wayne Dorsey of the 40th Precinct held § 87(2)(b) against the front desk. Police Officer Lucero said, "Calm the fuck down. Don't try that shit right here. We're not the ones motherfucker, we're not the ones" (Board Review 43).

Police Officer Lucero stated that when he was at the front desk of the 40th Precinct stationhouse, he said, “I’m not the one motherfucker,” to § 87(2)(b). He said this “out of frustration” because § 87(2)(b) had been cursing at officers. Upon reviewing the body-worn camera footage, he affirmed that he said, "Calm the fuck down. Don't try that shit right here. We're not the ones motherfucker, we're not the ones,” and reiterated that the reason he made these statements was because he was frustrated.

§ 87(2)(g)

[REDACTED]

§ 87(4-b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(4-b), § 87(2)(g) [Redacted]
[Redacted]

[Redacted] § 87(2)(b) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

[Redacted] § 87(2)(b) [Redacted] § 87(4-b), § 87(2)(g) [Redacted]
[Redacted]

[Redacted] § 87(2)(b) [Redacted]
[Redacted]
[Redacted]

[Redacted]
[Redacted]
[Redacted]

[Redacted]
[Redacted]

[Redacted] § 87(2)(b) [Redacted] § 87(4-b), § 87(2)(g) [Redacted]
[Redacted] § 87(2)(b) [Redacted]
[Redacted]
[Redacted]

[Redacted] § 87(2)(b) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

[Redacted]
[Redacted]

[Redacted]
[Redacted]
[Redacted] § 87(2)(b) [Redacted]

[Redacted]
[Redacted]
[Redacted]
[Redacted]

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 47).
- Sergeant Miller has been a member-of-service for seventeen years and has been a subject of ten CCRB allegations in six complaints. § 87(2)(g)
- Police Officer Bulfamante has been a member-of-service for six years and has been a subject of three CCRB allegations in three complaints. § 87(2)(g)
- Police Officer Manzo has been a member-of-service for three years and has been a subject of nine CCRB allegations in six complaints.
- Police Officer Cruz has been a member-of-service for five years and has been a subject of five CCRB allegations in two complaints.
- Police Officer Nijnic has been a member-of-service for three years and has no prior complaints against him.
- Police Officer Lucero has been a member-of-service for three years and has been a subject of nine CCRB allegations in five complaints.

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation because of § 87(2)(b)'s arrest.
- Following his arrest on July 29, 2018, § 87(2)(b) pleaded guilty to one count of disorderly conduct (Board Review 02)
- According to the Office of Court Administration (OCA), § 87(2)(b) has no criminal convictions in New York City (Board Review 02).
- According to the New York City Comptroller's Office, as of July 25, 2019, no Notice of Claim has been filed in this case (Board Review 48).

Squad 12

Investigator: _____

Signature

Print Title & Name

Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date